IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Udai Singh. Versus State of Rajasthan.

S.B. Criminal Appeal No.396/2007

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Date of Order: August 02, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.Sandeep Mehta, for the appellant.
Mr.V.R. Mehta, Public Prosecutor for the State.

BY THE COURT:

By the order dated 2-7-2007, the appeal was posted for hearing.

This criminal appeal under Section 351 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the judgment and order dated 9-5-2007 passed by the Additional Sessions Judge (Fast Track), Chittorgarh (for short, "the trial Court" hereinafter) in Criminal Misc. Case No.6/2007, whereby the trial Court convicted the appellant under Section 350 of the Code and sentenced him to a fine of Rs.100/-.

I have heard learned counsel for the appellant and the Public Prosecutor. Carefully gone through the order

impugned, as also the record of the court below.

Learned counsel for the appellant has relied on a decision of the Orissa High Court in Satchidananda Jena Vs. State of Orissa, 1996 Cri.L.J. 1863, wherein it has been held that failure to appear on the date fixed by the Court has been satisfactorily explained by the accused therein and the reasons do not appear to be unreasonable. Not only this, subsequently the witness appeared and regretted his absence as also appeared in the witness box and made the statement. On these premises, the proceedings under Section 350 of the Code were quashed.

Learned counsel for the appellant submits that a detailed reply was filed by the appellant before the trial Court showing the reasons which prevented him to appear as a witness when he was called upon to appear. Without considering the reasons, the trial Court passed the impugned order. Learned counsel further submits that in Sessions Case No.64/2006, the appellant appeared as a witness and made the statement as PW8 Udai Singh and even the accused therein have been acquitted vide judgment and order dated 7-4-2007. He has placed on record a certified copy of the judgment dated 7-4-2007 passed by the trial Court, wherein it has been mentioned that the statement of Udai Singh has been recorded and he has proved the document EX.P/16. More so, he being a formal

witness, his attendance was even otherwise not essential. The main accused have been acquitted. Thus, having regard to the facts and circumstances of the case, in my view, the appellant has shown sufficient cause for his absence and making statement before the trial Court when he was called for, but subsequently he made the statement by putting his appearance as a witness. Therefore, in my view, the impugned order cannot be sustained and is liable to be set aside.

The appeal is allowed. The impugned order is set aside and the appellant is acquitted of the offence under Section 350 of the Code.

(H.R. PANWAR), J.

mcs